

**DETAILED ACTION**

***Claim Objections***

Applicant is advised that should claim 3 be found allowable, claim 14 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

Claims 2-12 and 14-21 are objected to because of the following informalities:

In claim 21, line 5, "the actuating pressure" should be --an actuating pressure--.

In claim 21, lines 11-12, "the at least one target temporal progression" should be --the at least one predetermined target temporal progression--.

In claims 2, 4, and 15, line 2 respectively, "the predetermined target progression" should be --the at least one predetermined target temporal progression--.

In claim 2, line 3, "at least one target characteristic" should be --at least one predetermined target characteristic--.

In claim 4 (lines 4 and 9), claim 7 (lines 3-4), claim 8 (line 4), and claim 15 (lines 4 and 7-8), "the temporal progression" should be --the actual temporal progression--.

In claims 4 and 15, line 11 respectively, --in the case -- should be inserted after "characteristic".

In claims 5, 16, and 17, lines 3 and 4 respectively, "the individual motor vehicle system" and "the motor vehicle system" should be --the motor vehicle--.

In claim 7, line 3, "the times" should be --times--.

In claim 8, line 3, "the actuating pressure gradients" should be --actuating pressure gradients--.

In claim 15, the amendment in lines 7-8 should be removed and inserted after "characteristic" in line 10.

Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 2-12 and 14-22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 21 recites the limitation "dynamically detecting the actuating pressure of the retarder by means of the pressure sensor that is connected in the actuating pressure control circuit; comparing an actual temporal progression of the detected actuating pressure with at least one predetermined target temporal progression of the actuating pressure" in lines 5-8. It is unclear exactly what is imparted by the recitation of "dynamically" (which appears to be related to the recitation of "temporal progression"). Applicant's arguments filed 12/10/2009 appear to impart a more specific

or more narrow interpretation of "dynamically" as compared to the Examiner's broader interpretation. Yet, Applicant has not clearly defined exactly what it means to dynamically detect the actuating pressure by means of the pressure sensor. Accordingly, the Examiner submits that the scope of the claim has been rendered indefinite. For the purpose of examination, the Examiner has given the broadest reasonable interpretation of "dynamically" to mean "continuously and/or actively." The Examiner further submits that most electronic pressure sensors detect pressure continuously and/or actively, at least to some degree, during their operation. Thus, it is unclear exactly how Applicant's use of a pressure sensor is distinguished from the prior art.

Claim 4, even as amended, is still generally confusing as to exactly what is being recited, thereby rendering the scope of the claim indefinite. In particular, claim 4 appears to recite several conditional statements regarding when the temporal progression of the detected actuating pressure is compared with the warning characteristic and/or the immobilization characteristic, when a warning is issued, and when a future activation of the retarder is prevented. It appears that different conditional statements are recited for two different cases--the case of a braking torque decrease and the case of a braking torque increase. However, the manner in which these different conditional statements are presented is generally confusing, rendering it unclear if any sequence or order of method steps is imparted, as well as exactly when the temporal progression of the detected actuating pressure is compared with the

warning characteristic and/or the immobilization characteristic, when a warning is issued, and when a future activation of the retarder is prevented.

Claim 15 is rejected for at least the same reasons as set forth above for claim 4.

Claim 17 recites the limitation "the target characteristic." Claim 4, which claim 17 depends on, recites "two target characteristics." Thus, it is unclear exactly which target characteristic is being referred to in claim 17.

Claim 19 is rejected for the same reasons as set forth above for claim 17.

Claim 22 recites the limitation "dynamically monitoring actuating pressure for error detection" in the last line. The claim is rejected for at least the same reasons as set forth above for claim 21 with regard to the recitation of "dynamically."

#### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 2-12 and 14-22 are rejected under 35 U.S.C. 102(b) as being anticipated by Japanese Patent Document JP 07-291114 (JP '114).

Regarding independent claim 21, JP '114 discloses a method for monitoring a braking torque modification of a retarder (11) for a motor vehicle, the braking torque modification being controlled by an actuating pressure control circuit (21) comprising a pressure sensor (8) that is connected in said circuit, the method comprising:

dynamically detecting an actuating pressure (m) of the retarder by means of the pressure sensor that is connected in the actuating pressure control circuit (as best understood; see the 35 U.S.C. 112, 2<sup>nd</sup> paragraph rejection above; the Examiner submits that pressure sensor 8 can be said to dynamically detect an actuating pressure m because pressure sensor 8 detects the actuating pressure m continuously and/or actively, at least to some degree, during its operation in a closed control circuit 21; see Fig. 3 and paragraph 0037 of the provided English machine translation disclosing a control scheme that is performed repeatedly as long as a retarder switch 5 is on); comparing an actual temporal progression of the detected actuating pressure with at least one predetermined target (as broadly recited; see the provided English abstract, last sentence disclosing comparison with "a prescribed range") temporal progression of the actuating pressure (the Examiner submits that a temporal progression of the actuating pressure is met by JP '114 because the method of JP '114 is performed repeatedly, as set forth above, over some period of time); and issuing a warning (see warning means 48) and/or preventing a future activation of the retarder by an operator of the vehicle based on whether predetermined criteria have been fulfilled resulting from the comparison of the actual temporal progression and the at least one predetermined target temporal progression (as broadly recited; see the provided English abstract, last sentence).

Regarding dependent claims 2-12 and 14-20, the Examiner submits that JP '114 meets the limitations of the claims, as broadly recited and as best understood (see the 35 U.S.C. 112, 2<sup>nd</sup> paragraph rejections above). Also see a retarder control unit (100)

(Fig. 1) comprising comparison means (47, 49) (Fig. 2); comparison of the actual detected actuating pressure (m) with at least two characteristics (s and t) having minimum and maximum values (s<sub>1</sub>, s<sub>2</sub>, t<sub>1</sub>, t<sub>2</sub>) (see Fig. 2 and paragraphs 0027-0028 and 0034-0035 of the provided English machine translation); and a reservoir (4).

Regarding independent claim 22, the claim, as broadly recited, is rejected for at least the same reasons as set forth above. Also see the 35 U.S.C. 112, 2<sup>nd</sup> paragraph rejection above.

#### ***Response to Arguments***

Applicant's arguments filed 12/10/2009 have been fully considered but they are not persuasive.

Applicant appears to argue that JP '114 does not disclose the comparison of a dynamic temporal progression of the detected pressure with at least one predetermined target temporal progression of the actuating pressure, presumably because Applicant believes that the actuating pressure is not detected or monitored "dynamically." First, it is unclear exactly how Applicant defines the recitation of "dynamically" (see the 35 U.S.C. 112, 2nd paragraph rejections above). Thus, the Examiner has given the broadest reasonable interpretation of "dynamically" to mean "continuously and/or actively." In JP '114, the Examiner submits that pressure sensor 8 detects the actuating pressure m continuously and/or actively, at least to some degree, during its operation in a closed control circuit 21 (see Fig. 3 and paragraph 0037 of the provided English machine translation disclosing a control scheme that is performed repeatedly as long as

a retarder switch 5 is on). Accordingly, the Examiner submits that detection of a "temporal progression" of the actuating pressure is disclosed by JP '114 because the method is performed repeatedly over some period of time. In other words, although at any given instant, an actuating pressure is detected and compared with a predetermined range or target, there is still a temporal progression because the method of JP '114 is performed over time.

In this way, the Examiner maintains that JP '114 meets the limitations of the claims, as broadly recited.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to VU Q. NGUYEN whose telephone number is (571) 272-7921. The examiner can normally be reached on Monday through Friday, 11:30 AM to 8:00 PM, EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Siconolfi can be reached on (571) 272-7124. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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